

REMARKS

The present amendment is submitted in response to the Office Action dated December 31, 2008. Claims 1 and 13-16 are pending in the application, with claims 3, 9, and 12 having been cancelled herein. Reconsideration and further examination of the application in view of the foregoing amendments and following remarks are respectfully requested.

Applicant wishes to thank the Examiner for the courtesies and thoughtful treatment extended to Applicant's undersigned representative during the April 27, 2009 interview and the May 29, 2009 follow-up interview. The foregoing amendments and following remarks reflect the substance of the interviews.

As discussed during the April 27, 2009 interview, independent claim 1 has been amended to add the subject matter of claims 3, 9, and 12. Because each of cancelled claims 3, 9, and 12 separately depended from claim 1, amended claim 1 now comprises a new combination of subject matter that has not yet been examined. In particular, claim 1 now recites the "*electronic audio apparatus is formed to have a low front part and a high rear part, and the groove has shallow depths at its front part and deep depths at its rear part, such that a top surface of said electronic audio apparatus has a low front part and a high rear part when placed on a table, and stays on a substantially horizontal position when mounted on said stand*". Applicant believes the amended language clarifies the structure of the electronic audio apparatus, particularly with regard to the combination of the claimed low front part and high rear part, and the groove's shallow depths at its front part and deep depths at its rear part, which result in the top surface of the apparatus having a low front part/high rear part configuration when placed on a table, and the top surface staying substantially horizontal when mounted on the stand.

During the April 27, 2009 interview, the foregoing amendments were discussed in light of the rejection's assertion that it would have been obvious to use Bodine's disclosure of an orthotic and restraining device for holding a patient's forearm to modify Chvojcek's electronic shorthand typewriter. Applicant contended that one skilled in the art seeking to modify a tripod-mounted shorthand typewriter would not have looked to far afield disclosures of medical cushion devices,

particularly Bodine's restraining cushion. Bodine's restraining cushion is "for restraining and shielding the forearm and hand" of a patient. (Col. 1, lns. 7-8.) Bodine's cushion accomplishes its purpose when a patient's forearm is strapped to the upper surface. However, having an arm strapped to the top of Chvojsek's typewriter would defeat its purpose because the keys would not be accessible. Applicant believes one skilled in the art of shorthand typewriters would not have looked into Bodine's field, much less have looked into Bodine's forearm restraining cushion disclosure.

Even if one skilled in the art of shorthand typewriters found reason to look into Bodine's field and came across Bodine's disclosure, they would have found no motivation to combine Bodine with Chvojsek. On the contrary, they would have found reason not to combine Bodine and Chvojsek. Particularly in light of the present amendment's combination of structure from three dependent claims, it should be clear that one skilled in the art would not have the Office Action's proposed motivation to combine Bodine with Chvojsek -- to enable the forearm of a human to rest comfortably within the device (groove). If a forearm is in a groove on the underside of Chvojsek's typewriter, the typewriter could not be mounted to a tripod, which defeats the purpose of Chvojsek's "Tripod for Supporting a Shorthand Machine". (See, title of Chvojsek.) Likewise, if Bodine's human forearm were resting on the top of Chvojsek's typewriter, the typewriter could not be used for typing, which also defeats the purpose of Chvojsek. In sum, Bodine's purpose of restraining a forearm consistently runs afoul of Chvojsek's purpose of mounting a typing machine on a tripod and typing on it. (See, MPEP 2143.01(V).)

Because of the numerous factors against a finding of *prima facie* motivation to combine Bodine's cushion with Chvojsek's typewriter, Applicant requested the Examiner consider removing Bodine. The Examiner agreed that it appeared it might be best to remove Bodine and perform a more focused search in light of the amendments adding the subject matter of claims 3, 9, and 12 to the independent claim 1. However, the Examiner emphasized that further consideration of all of the references, in addition to a new search, is always advisable.

Although Applicant's position is that the subject matter of the claims has been searched, given the foregoing amendments of incorporating claims 3, 9, and 12 into claim 1, Applicant's have chosen to file this amendment with an RCE to give the Examiner the opportunity for further consideration.

Turning to the Office Action, claims 1, 3, 9, 12, 14, 15 and 16 were rejected under 35 USC §103(a) over Chvojsek (USP 5,395,178), Bodine, Jr. (USP 5,060,638) and Hirade et al. (USP 7,119,267). Claim 13 was rejected under 35 USC §103(a) as being unpatentable over Chvojsek, Bodine, Jr. and Hirade et al. and further in view of Merks (US 2002/0009205). Of these, claim 1 is independent.

Claim 1 has been amended to add the subject matter of dependent claims 3, 9, and 12 and is patentable for the reasons set forth above.

Procedural Note: Follow-up Interview Prior to a Next Office Action

In light of the progress made during the interview, the Examiner graciously offered to contact Applicant's undersigned representative before a next Office Action, if the Action is not an allowance. Applicant thanks the Examiner and merely wishes to remind the Examiner of the offer.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 393032040600. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: June 1, 2009

Respectfully submitted,

By /Gregory S. Weaver, #53,751/

Gregory Weaver

Registration No.: 53,751

MORRISON & FOERSTER LLP

555 West Fifth Street

Los Angeles, California 90013-1024

(213) 892-5399